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ABSTRACT

A normative survey research methodology is described in which the author: (1) reviewed the historical development of the professionalization of public school guidance counselors, including selected literature, current state statutes, and court decisions; (2) constructed an opinionnaire, based on the norms uncovered in the review; (3) submitted the opinionnaire to a jury for validation of its statements; (4) reported validated statements as guidelines; and (5) compared the validated guidelines with current state statutes. Major findings are summarized and categorized and conclusions are drawn from them. Finally, the validated statements are recommended in the form of guidelines to assist legislators in the 50 states in enacting new legislation or amending existing state statutes. Nine categories of guidelines are offered, which include licensing, civil and criminal liability, and expert witness. (TL)

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LEGISLATIVE GUIDELINES FOR THE PROFESSIONALIZATION OF SCHOOL COUNSELORS

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The Development of Guidelines To Be Used
By Legislators To Legitimize
The Professional Life Of Public School Guidance Counselors

ABSTRACT

Problem

The purpose of this study was to develop guidelines to be used by legislators in enacting legislation to legitimize and control the role and functions of public school guidance counselors. A secondary purpose was to determine the current status of state legislation related to public school guidance counselors and to determine how this legislation compared with the guidelines established in the study.

Procedures

The normative survey method of research was used. This research procedure consisted of three stages: survey stage, normative stage, and reporting stage.

In the survey stage, the historical development of the professionalization of public school guidance counselors was reviewed. Normative statements were collected from selected literature, current state statutes, and court decisions. Statutes of the fifty states were examined. Court cases dealing specifically with public school guidance counselors were reviewed. State guidance directors were sent questionnaires requesting information concerning the legal status of public school guidance counselors in their states. The normative statements were refined and categorized. An opinionnaire was constructed for presentation to a jury. Finally, a jury was selected.

In the normative stage, the statements contained in the opinionnaire were validated. The validated statements were reported as

guidelines. Finally, the validated guidelines were compared with current state statutes.

In the reporting stage, the purpose of the study was stated and the activities used in the study were described. An extract of the findings was presented. Finally, conclusions were drawn and recommendations were made.

Major Findings

The findings were summarized and placed in categories. These categories were: professional development, legislative enactments, court decisions, proposed legislation, opinions by attorney generals or county counsels, guidelines endorsed by state departments of education, and comparison of guidelines with existing state statutes.

Professional development. Public school guidance counseling as a profession had progressed through stages of professional development but it was not fully mature since it was not recognized in the law.

Legislative enactments. Twenty-two states had statutes relating to public school guidance counselors.

Court decisions. Five court decisions were specifically related to public school guidance counselors.

Proposed legislation. Eight states had proposed legislation for public school guidance counselors.

Opinions by attorney generals or county counsels. Five states had opinions by attorney generals or county counsels which were related to public school guidance counselors.

Guidelines endorsed by state departments of education. Thirteen states had guidelines endorsed by state departments of education for public school guidance counselors.

Comparison of guidelines with existing state statutes. Seventeen of the forty-nine guidelines to be used by legislators were evidenced in current state legislation. Seven of the nineteen guidelines not to be used by legislators were evidenced in current state legislation.

Conclusions

On the basis of the findings, the following conclusions appear justified:

1. Public school guidance counseling is emerging as a profession.

2. Few public school guidance counselors are legitimized as professionals at the state level.

3. A need exists for a common definition regarding role, functions, and duties of public school guidance counselors before state legislation is attempted.

4. Current state statutes which legitimize the role and functions of public school guidance counselors are inconsistent in scope.

5. There is a trend in state legislation to provide statutory enactments for privileged communication and breach of confidentiality for public school guidance counselors and their clients.

6. Court decisions provide no consistent pattern in defining the legal status of public school guidance counselors.

7. Current state statutes do not compare favorably with the guidelines in this study.

Recommendations to Legislators

The validated statements to be used by legislators in enacting legislation are recommended in the form of guidelines to assist legislators in the fifty states in enacting new legislation or amending

existing state statutes. The guidelines are presented in nine categories: (1) Licensing of Guidance Counselors; (2) Privileged Communication; (3) Criminal Liability: Malpractice; (4) Civil Liability: Negligence; (5) Civil Liability: Intentional Torts - Defamation, Invasion of Privacy, Breach of Confidentiality; (6) Civil Liability: Intentional Tort - Defamation; (7) Civil Liability: Intentional Tort - Invasion of Privacy; (8) Civil Liability: Intentional Tort - Breach of Confidentiality; and (9) Expert Witness.

Licensing of guidance counselors.

1. Licensing legislation for guidance counselors should define the practice of guidance counseling.

2. Licensing legislation for guidance counselors should limit the title guidance counselor to persons so licensed.

3. Licensing legislation for guidance counselors should make it unlawful to practice guidance counseling without a license.

4. Requirements for licensing guidance counselors should be established by a board of examiners.

5. Requirements for licensing guidance counselors should be established for more than one level of competency.

6. The licensing board should be composed of members of the guidance counseling profession.

7. The licensing board should have the power to issue a license.

8. The licensing board should have the power to refuse a license.

9. The licensing board should have the power to revoke a license.

10. The licensing board should have the power to suspend a license.

11. The licensing board should require a hearing prior to revocation of a license.

12. The licensing board should require a hearing prior to suspension of a license.

Privileged communication.

1. Privileged communication legislation for guidance counselors should protect all communications.

2. Privileged communication legislation for guidance counselors should protect against suits for defamation.

3. Privileged communication legislation for guidance counselors should protect against suits for invasion of privacy.

4. Privileged communication legislation for guidance counselors should protect any licensed guidance counselor.

5. Privileged communication legislation for guidance counselors should protect any client of a licensed guidance counselor.

6. Privileged communication legislation for guidance counselors should be modeled after the attorney-client privilege.

7. Privileged communication legislation for guidance counselors should be applicable in criminal proceedings.

8. Privileged communication legislation for guidance counselors should be applicable in civil proceedings.

9. Where abuse of privileged communication might take place, exceptions should be determined by a court of law.

10. Where privileged communication legislation does not exist, guidance counselors should arrange a conference with the court before testifying.

Criminal liability: malpractice.

1. To avoid suits for malpractice, the guidance counselor and/or guidance profession should establish a clear definition of guidance counseling.

2. To avoid suits for malpractice, the guidance counselor and/or guidance profession should be judged by the standards of his professional group.

3. To avoid suits for malpractice, the guidance counselor and/or guidance profession should consider other practice codes before publication of job duties.

4. To avoid suits for malpractice, the guidance counselor and/or guidance profession should avoid implying professional qualifications exceeding those possessed.

5. To avoid suits for malpractice, the guidance counselor and/or guidance profession should avoid treating a client outside his competency.

6. To avoid suits for malpractice, the guidance counselor and/or guidance profession should provide services only in the context of a professional relationship.

7. To avoid suits for malpractice, the guidance counselor and/or guidance profession should make referrals to other professionals when necessary.

Civil liability: negligence

1. A guidance counselor should be held liable when he breaches a duty placed upon him.

Civil liability: intentional torts - defamation, invasion of privacy, breach of confidentiality.

1. Legislation should define the limits of public records.

2. A board of education should establish a formal policy on the use of pupil information.

3. A state board of education should formulate regulations on the use of pupil information.

4. A client should be informed of the conditions of the counseling relationship before entering it.

Civil liability: intentional tort -defamation.

1. Defamation legislation for guidance counselors should provide for qualified privilege.

2. A privilege for guidance counselors should exist for communication to a person having a corresponding duty to the client.

3. A privilege for guidance counselors should exist for recording of defamatory material.

Civil liability: intentional tort - invasion of privacy.

1. Protection against an invasion of privacy should be provided where the client gives written consent.

Civil liability: intentional tort - breach of confidentiality.

1. Information in counseling records that is confidential should be considered confidential records.

2. A guidance counselor who interprets pupil records should have the authority to interpret any records he releases.

3. Confidential information should be released when there is a clear and imminent danger to an individual.

4. Confidential information should be released when there is a clear and imminent danger to society.

5. A guidance counselor should permit disclosure of confidential information to the client.

Expert witness.

1. Expert witness legislation for guidance counselors should establish an adequate definition of guidance counselor.

2. Expert witness legislation for guidance counselors should require licensing legislation.

3. Expert witness legislation for guidance counselors should specify areas in which guidance counselors could serve as experts.

4. A guidance counselor should be able to testify on behalf of someone.

5. A guidance counselor should be able to disqualify himself if he has prior knowledge of the defendant.

6. A guidance counselor should be able to request appointment as Amicus Curiae.

Reference

Robinson, Richard T. "The Development of Guidelines to Be Used by Legislators to Legitimize the Professional Life of Public School Guidance Counselors." Unpublished Doctor's Dissertation, University of Denver, 1970.